

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter of)	
)	
Petition of Standing Rock)	WC Docket No. 09-197
Telecommunications, Inc.,)	
To Redefine Rural)	
Service Areas)	

REPLY COMMENTS OF TWIN HOUSES CONSULTING, LLC

Twin Houses Consulting, LLC (“THC”) submits these comments in reply to comments filed in the above captioned docket.¹ THC provides management and other consulting services to companies doing business on tribal lands. As the central question at issue in this docket is the proper jurisdiction of tribal *lands*, THC’s clients, as well as companies and tribal governments across this country, have a direct interest in the outcome of this docket. THC supports Standing Rock Telecommunications, Inc. (“SRTI”) Petition for Reconsideration and urges the Federal Communications Commission (“Commission”) to grant it.

SRTI, a company wholly-owned by the Standing Rock Sioux Tribe (the “Tribe”), a federally-recognized sovereign American Indian Nation, seeks to serve solely on its land – a geographic land area designated and protected by a treaty between the Tribe’s government and the United States federal government.² The Wireline Competition Bureau (“Bureau”) recognized the complete lack of state jurisdiction over the Tribe’s land when the Bureau designated SRTI as an Eligible Telecommunications Carrier (“ETC”).³ However, inexplicably, the Bureau ceded the federal government’s regulatory authority over the same tribal land when it submitted SRTI’s request for redefinition of service areas to the North Dakota Public

¹ *Comment Sought on Standing Rock Telecommunications, Inc.’s Petition for Reconsideration of the Standing Rock ETC Designation and Redefinition Order*, WC Docket 09-197, Public Notice 10-1988. (Wireline Comp. Bur. Rel. Oct. 15, 2010).

² *Petition For Reconsideration of Standing Rock Telecommunications, Inc.*, WC Docket 09-197, filed Sept. 23, 2010, p. 10 (“Petition for Reconsideration” or “Petition”).

³ *Memorandum Opinion and Order*, In the Matter of Telecommunications Carriers Eligible for Universal Service Support, Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier, Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas, WC Docket 09-197, adopt. Aug. 24, 2010, rel. Aug. 24, 2010, para. 15 (“Having determined that we have jurisdiction over the Standing Rock petition, we now examine whether Standing Rock satisfies the requirements of Section 214 of the Act for the requested service areas *on the Reservation*.”) (emphasis added) (“Bureau MO&O”).

Service Commission (“NDPSC”).⁴ This led to the instant petition by SRTI requesting that the Commission reverse this bifurcated decision by the Bureau.

I. NDPSC Has No Regulatory Authority Over the Tribe’s Land.

Neither of the two opposing commenters, the NDPSC⁵ or West River Telecommunications Cooperative⁶ (“West River”) address the lack of state regulatory authority over the Tribe’s land. Both incorrectly focus on NDPSC’s jurisdiction over West River. SRTI’s Petition for Reconsideration does not question NDPSC’s regulatory authority over West River: It asks the Commission to affirm the fact that NDPSC has no regulatory authority over the Tribe’s federally-recognized land.

Despite the claim made by West River that “nothing is presented in the [Petition for Reconsideration] that should alter the referral to the NDPSC,”⁷ the Petition requests that the Commission examine the legislative and statutory history of the relevant portion of the rules specifically with regards to the Commission’s duty to implement policies that uphold the unique legal relationship between the federal government and tribal governments.⁸ As noted by both the Cheyenne River Sioux Tribe Telephone Authority⁹ (“CRSTA”) and the Couer D’Alene Tribe,¹⁰ the Bureau in the MO&O affirmed the federal government’s sole authority to designate an ETC on tribal lands but ceded that same authority regarding defining service areas on the same lands. This dubious result was reached “without attempting to distinguish the Western Wireless Order, and without any analysis of the congressional intent underlying the enactment of 47 U.S.C. §214(e)(6).”¹¹

As SRTI’s Petition for Reconsideration discusses, there is legal and specific precedent for its position that the NDPSC has no jurisdiction on the Tribe’s land. Firstly, the Tribe’s Government and the U.S. Government reached a treaty that made “clear that issues involving utilities and infrastructure were

⁴ Bureau MO&O, para. 27.

⁵ *North Dakota Public Service Commission Comments and Response to Petition for Reconsideration of Standing Rock Telecommunications, Inc. to Redefine Rural Service Area*, WC Docket 09-197, (rec. Nov. 15, 2010, post. Nov. 16, 2010) (“NDPSC Opposition”)

⁶ *Comments of West River Telecommunications Cooperative in Opposition to Petition for Reconsideration*, WC Docket 09-197, Nov. 15, 2010 (“West River Opposition”).

⁷ West River Opposition, p. 4.

⁸ Petition for Reconsideration, p. 5, Footnote 9 quoting Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000) (“As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and *territory*.” (emphasis added)).

⁹ *Comments of the Cheyenne River Sioux Telephone Authority Regarding Standing Rock Telecommunications, Inc.’s Petition of Reconsideration of the Standing Rock ETC Designation and Redefinition Order*, WC Docket 09-197, Nov. 15, 2010 (“CRSTA Comments”).

¹⁰ *Comment, In the Matter of Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas*, WC Docket 09-197, Nov. 15, 2010.

¹¹ CRSTA Comments, p. 7.

intended to be negotiated directly between the Tribal government and the federal government.”¹² Secondly, the federal government through an Executive Order, binding on all federal agencies including the Commission, affirmed that tribes exercise sovereign powers over their territory.¹³ Thirdly, “the Commission’s own *Indian Policy Statement* clearly recognizes that Indian tribes exercise inherent sovereign powers over their members and territory.”¹⁴

The Bureau ignores this heavyweight legal precedent in the MO&O when stating that the NDPSC is “uniquely qualified to examine the proposed redesignation because of its familiarity with the rural telephone company’s service area in question.”¹⁵ In response, the NDPSC cites only *state* rules as support for its position that it can redefine the service area located exclusively on tribal lands.¹⁶ However, as an examination of the above-cited legal precedent shows, NDPSC, a state regulatory authority, lacks jurisdiction over the Tribe’s land and therefore cannot impose a decision affecting that land. The Commission must, in light of the overwhelming legal precedent, including a treaty between two sovereign powers, reverse the Bureau’s erroneous decision.

II. The Bureau’s Incorrect Decision Places Regulation Over Law.

As stated above and in SRTI’s Petition for Reconsideration, actions between the Tribe and the U.S. Government are founded in a treaty reached in 1868. It is the treaties, and the obligations they impose on both parties, that form the distinctive legal relationship between Indian Nations and the federal government.¹⁷ Like any other treaty entered into by the United States, treaties with Indian Nations are considered to be supreme law of the land.¹⁸ Further, Section 3 of Executive Order 13175 requires federal agencies to “respect Indian tribal self-government and sovereignty, honor tribal *treaty* and other rights and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.”¹⁹

The MO&O, however, does not acknowledge the sovereign rights of the Tribe or the Commission’s obligation to “preserve the prerogatives and authority of Indian tribes.”²⁰ Through the improper decision

¹² Petition for Reconsideration, p. 10 (parenthetical and footnote omitted).

¹³ *Infra.*, Footnote 8 citing Executive Order 13175.

¹⁴ Petition for Reconsideration, p. 5.

¹⁵ MO&O, para. 27.

¹⁶ NDPSC Opposition, p. 2.

¹⁷ See Executive Order 13175.

¹⁸ See, for example, the Bureau of Indian Affairs website: <http://www.bia.gov/FAQs/index.htm> (last accessed Nov. 30, 2010).

¹⁹ Executive Order 13175, Section 3 (emphasis added).

²⁰ *Ibid.*

to cede jurisdiction to the NDPSC, the MO&O sets a regulation *above* the Tribe's treaty rights. The legal relationship between the Tribe's government and the federal government, the position of treaties as law in the United States and the explicit directions issued to the Commission by Executive Order 13175 demands the proper placement of regulations below law. By reversing the Bureau's decision, the Commission can protect the sovereign rights of the Tribe.

III. The Commission Should Use This Opportunity to Re-Establish Its Trust Relationship with Tribal Governments.

Commissioner Michael Copps, in a speech before the National Congress of American Indians, stated that the Commission "has finally gotten serious about re-establishing its trust relationship with the Tribal Governments."²¹ THC's clients, tribes and businesses providing services on tribal lands, welcomes this statement by Commissioner Copps and looks forward to positive relations. The question of jurisdiction is at the core of many economic development projects in Indian Country. It is difficult for any business – tribally-owned or not – to go forward with a project if the question of jurisdiction is unsettled. In the instant circumstance, the jurisdictional question is not just unsettled but utterly confusing. In one instance, the MO&O properly claims federal jurisdiction but then, for the same geographic area, relinquishes it to a party with no legal claim over that area. For many businesses, the perplexing application of regulatory authority found in the MO&O would be a red flag on the project too vibrant to ignore.

The Commission cannot waste the opportunity presented by SRTI's Petition for Reconsideration. It must, in order to promote the trust relationship with tribal governments, as well as adhere to legal precedent, remove the improper condition of NDPSC consent from SRTI's ETC designation.

Respectfully Submitted,
[electronically filed]
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²¹ *Remarks of Michael J. Copps to the National Congress of American Indians*, Albuquerque, New Mexico, Nov. 17, 2010.